

A Community of Excellence

Development Services Department

90 E. Civic Center Drive Gilbert, AZ 85296 (480) 503-6700 Phone (480) 497-4923 Fax www.gilbertaz.gov

VARIANCE

APPLICATION & PROCESS GUIDE

TOWN OF GILBERT PLANNING SERVICES DIVISION

http://www.gilbertaz.gov/departments/development-services/planning-development

VARIANCE APPLICATION PROCEDURES

The following information is provided to assist in the preparation and submittal of an application for a Variance for a property within the Town of Gilbert.

A Variance provides a mechanism for relief from the strict application of the Zoning Code where strict application will deprive the property owner of privileges enjoyed by similar properties. A Variance may be granted with respect to dimensional and performance standards including, but not limited to, site dimensions, yards, height of structures, distances between structures, open space requirements, signage dimensions, fences, and walls. No application for a Variance from the use regulations of the Zoning Code will be accepted.

The following steps occur in the Variance process:

1. *Application Completeness* – For an application to be accepted, the Applicant must provide all of the required information described on the submittal checklist, as incomplete applications **will be** rejected.

2. Forms/Review:

- a. Administrative Completeness Review (see Planning Division Project Review

 <u>Timelines</u>): Staff will review the application to make sure all required documents and information have been included. If required information is missing, Applicant will be notified that the application has been rejected until all required information is submitted. If the application is rejected, upon resubmittal, a new Administrative Completeness Review will be required.
- b. <u>Substantive Review</u> (see <u>Planning Division Project Review Timelines</u>): When complete, the application will be routed to Town staff and affected agencies for review and comment. After this review is completed, the comments are consolidated and returned to the Applicant. The Applicant is responsible for addressing staff comments, revising and amending the application as required, and submitting a complete set of revised plans for a second review to ensure all comments have been addressed to the satisfaction of the Town. All required documents must be resubmitted regardless of whether that particular page or document was revised.
- c. If all comments and issues identified in the Substantive Review have not been addressed to the satisfaction of Staff in the resubmission, the application will be denied. In lieu of denial, the Applicant may, either in writing or electronically, agree to allow Gilbert to submit supplemental requests for additional information. If Gilbert issues a comprehensive written or electronic request or a supplemental request, the Substantive Review timeframes are suspended until the additional information is submitted by the Applicant.
- 3. Neighborhood Notice The Town will prepare the Notice of Public Hearing setting forth the purpose, time, date and place of meeting for the Variance and provide a copy to the applicant. For each required public hearing the applicant must mail the Notice of Public Hearing by first class-mail at least fifteen (15) calendar days prior to the date of the hearing to the following:

- a. All property owners of record within three hundred (300) feet of the site unless the site is located within the General Plan Santan Character Area, in which case property owners within six-hundred sixty (660) feet are to be notified;
- b. All Homeowners Associations within one thousand (1000) feet of the site identified on the Maricopa County Assessor's website (www.maricopa.gov/assessor);
- c. All neighborhoods within one thousand (1000) feet of the site registered with the Town of Gilbert Neighborhood Services Office;
- d. To the owner if the application is initiated by a person other than the owner; and
- e. Any person or group who has requested notice in writing.

The Planning Manager may expand the notification area set forth in this section if it is determined that the potential impact of the project extends beyond the required notification boundary. The applicant must submit a signed affidavit of mailing prior to public hearing. Failure of the applicant to provide evidence of mailing will result in a postponement of the public hearing item. The applicant will be charged a fee for the postponement.

- 4. *Property Posting (Sign)* The Town will prepare the Notice of Public Hearing Sign Template for the Variance and provide a copy to the applicant. Signs must be posted at least fifteen (15) calendar days prior to the date of the public hearing. The applicant is responsible for posting the sign on the property, subject to the following specifications and requirements:
 - a. Posting, maintenance, and removal of signs are the responsibility of the applicant. The applicant must remove all signs within ten (10) days of the public hearing. If the sign is not removed on time, the Town will remove the sign and charge the applicant a removal fee:
 - b. The applicant must submit a signed and dated affidavit of posting, and color photos of the posted signs prior to the public hearing; and
 - c. Failure of the applicant to provide evidence of posting will result in a postponement of the public hearing. The applicant will be charged a fee for the postponement.
- 6. Staff Reports After the staff comments have been addressed and the application has been scheduled for a public hearing, the Planning Division will prepare a report describing and evaluating the request and making a recommendation to the Zoning Hearing Officer. A copy of the staff report will be made available to the public and the applicant prior to the public hearing.
- 7. Public Hearing The Zoning Hearing Officer will conduct a public hearing for variance applications a minimum of thirty (30) days after receipt of the request. The decision of the Hearing Officer will be based whether the variance request meets the findings required by state statute (Arizona Revised Statutes A.R.S. 9-462.06). Hearings are held at the Town of Gilbert Community Development Building, 90 E. Civic Center Drive. The applicant or project representative must be present at the hearing. The Hearing Officer will approve, approve with modifications and/or conditions or deny the request.
- 8. Referral to Board of Adjustment The Zoning Hearing Officer may, upon review of the facts of the application, determine that the case merits review by the Board of Adjustment. In such cases, the Hearing Officer will prepare a written statement of the reasons for referring the matter to the Board. Staff will schedule the matter for hearing at the next available Board of Adjustment hearing and submit the Hearing Officer's statement to the Board along with the

staff report.

- 9. *Appeal* Decisions of the Zoning Hearing Officer may be appealed to the Board of Adjustment pursuant to the procedures set forth in Section 5.2011: Procedures for Appeals. Appeals from decisions of the Zoning Hearing Officer and Board of Adjustment shall be filed within 30 calendar days of the decision.
- 10. *Building Permits* Only after the variance has been approved if applicable Design Review Board approval, can a building permit be issued. All construction documents for a project must conform to exhibits approved by the Zoning Hearing Officer, including any conditions of approval. Permits may not be issued until the 30 day statutory appeal period has expired.
- 11. *Inactive Cases* All applications are required by the Land Development Code to be actively pursued to a decision. If no activity has occurred on an application for 180 days, the application will be determined to be inactive, deemed to be withdrawn and the file will be closed. The applicant may submit a written request that the application remain active, with an explanation for the inactivity. The Planning Manager may grant an extension for up to 180 days for good cause if there is a reasonable belief that the application will be actively pursued during the extension period.

VARIANCE CONTENT REQUIREMENTS

1. Required Findings ■ Narrative describing the proposed variance; □ Narrative providing a detailed response to the four findings noted on Page 7. 2. Site Plan ☐ Vicinity Map; ☐ Scale, north arrow, and dimensions: ☐ Net acres: ☐ Required building setbacks; ☐ Existing zoning on site and adjacent properties within 50 feet; ☐ Property lines, easements, alleys, private streets, and adjacent rights-of-way and easements showing existing and future improvements, access points, signals, etc.; ☐ Location of required building setbacks and spaces between buildings with dimensions; ☐ Location and size of any existing/proposed building(s), structure(s), or land uses; and ☐ Adjacent lot lines and/or structures within 50 feet; 3. **Elevations** (if applicable) ☐ All elevations of each building proposed for the project; ☐ Exterior dimensions; ☐ Materials proposed; and ☐ Location and type of lighting fixtures proposed. 4. **Sign Variance applications only** (Wall Mounted and Freestanding Signs) ☐ Location and dimensions of existing signs; and ☐ Location and dimensions of proposed signs.

Required Findings

A Variance cannot be granted unless evidence is presented that satisfies, at a minimum, the four conditions listed below, as mandated by Arizona Revised Statutes A.R.S. 9-462.06. Failure to adequately provide such information may result in a continuance or denial of the case.

The Zoning Hearing Officer or the Board of Adjustment may only approve a Variance after finding evidence that:

- 1. There are special circumstances applicable to the property, including its size, shape, topography, location, or surroundings, whereby the strict application of the zoning ordinance will deprive such property of privileges enjoyed by other property of the same classification in the same zoning district;
- 2. Such special circumstances were not created by the owner or applicants;
- 3. The variance does not constitute a grant of special privileges inconsistent with the limitations upon other properties in the vicinity and zone in which such property is located; and
- 4. The variance will not be materially detrimental to persons residing or working in the vicinity, to adjacent property, to the neighborhood, or the public welfare in general.



VARIANCE APPLICATION

Received By:

Project Name:		
Address or Locatio		
Subdivision name: (Residential request)	Lot number:	
Request:	☐ Single Family ☐ Non-Residential	
] Multi-Family	
Request Details:		
Land Development Code Section: Tax Parcel Number		
Net Acres:		
	Zoning:ase print – all information must be provided)	
	E-mail:Fax:	
Signature*: * A letter of authorizat	Date: from the property owner is required if the application is not signed by the over	wner.
Applicant/Contact:	Please print – all information must be provided)	
Company: Contact Name: (print) Address:	E-mail:	
City, Zip: Phone:	Fax:	
Signature:	Date: FOR STAFF USE ONLY	
Submittal Date	Case Number	
Fee Paid	EDEN Permit Number	
Receipt Number	EDEN Permit Type PV A	4

Variance

Application & Process Guide (Updated 4/2014)

Variance Checklist

REQUIRED MATERIALS (All applications)	Applicant Checklist	Staff Verification
PDF copy on disk of ALL required items on checklist with images formatted no larger than 11" x 17", saved in a single layer with no write protection		
Submit hard copy of ALL required items below:		
Application		
Fee (see Planning fee schedule)		
Project Narrative and required findings		
Proposition 207 Waiver Form with required Exhibits: • Exhibit A − Title Report. □ • Exhibit B − Legal Description & Map of Site. □ • Exhibit C − Requested action setting forth any modifications,		
changes, deletions, or additions		
Optional Information (i.e. letters from adjoining property owners, photos, sketches or letters of approval from Homeowner's Association)		
Site Plan (Single Family Residential):		
• 1 copy – (11" x 17") laser print copy to scale		
Site Plan (Multi-Family and Non-Residential):		
• 1 copy – (11" x 17") laser print copy to scale		
Elevations (if applicable):	_	
• 1 copy (11" x17") laser print copy to scale		
Neighborhood Notice:		
A parcel map highlighting properties within 300 feet, or 660 feet for properties in the Santan Character Area. Homeowners Associations and neighborhoods within 1,000 feet of the property of the site		
Typed names and addresses of all <u>property owners</u> identified on highlighted parcel map		

Variance

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TOWN OF GILBERT

AGREEMENT TO WAIVE CLAIMS FOR DIMINUTION IN VALUE

PURSUANT TO A.R.S. § 12-1134

I/We,	, ("Owner") am/are all of the owner(s) of real property			
("Property") generally located at	, consisting of approximately			
acres, as shown in the evidence of owr	nership (Exhibit A) and is legally described and shown on			
the map in <i>Exhibit B</i> , both of which are attached to this Agreement.				
-	•			

The Property is subject to the land use laws of the Town of Gilbert, Arizona. For purposes of this Waiver, "land use law" shall be defined as set forth in A.R.S. § 12-1136.

I/We have requested that the Town take/approve the land use action ("Requested Action") as set forth in *Exhibit C*, which is attached to this Agreement.

I/We acknowledge that as the request is processed for approval, changes may be made to the details and requirements for approval of the request. Some of these changes may materially alter the request, so that the final approval may be substantially different than originally requested. I/We understand and agree that execution of an additional waiver will be required for approval if the request is altered.

I/We acknowledge that the Requested Action may alter my/our rights to use, divide, sell or possess our Property, and that, pursuant to A.R.S. § 12-1134, as the owner of property directly regulated by a land use law, I/we may be entitled to compensation from the Town for diminution of value in the property if the action I/we have requested from the Town reduces the fair market value of the above described property.

By signing this Agreement, I/we hereby agree to waive any and all claims for diminution in value for the Property which may arise pursuant to A.R.S. § 12-1134 as a result of the Town's actions, including but not limited to approvals, denials or conditions of approvals with respect to the above-described Requested Action.

I/we hereby further understand that the Town is acting in reliance upon my/our representations in this waiver.

Project No Waiver of Claims for Diminution in Value Signature Page	
	Date:
Property Owner By Its	
STATE OF ARIZONA)) ss. County of Maricopa)	
SUBSCRIBED AND SWO	RN before me this day of, 20, by
My Commission Expires:	Notary Public